

§ 2424.25

5 CFR Ch. XIV (1–1–13 Edition)

disagreement with claims that the exclusive representative made in the petition for review; specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on; and a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your statement of position electronically through use of the FLRA's eFiling system). Your statement of position must also include the following:

(i) If different from the exclusive representative's position, an explanation of the meaning the agency attributes to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning;

(ii) If different from the exclusive representative's position, an explanation of how the proposal or provision would work, and the reasons for disagreeing with the exclusive representative's explanation;

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review; and

(4) Any request for a hearing before the Authority and the reasons supporting such request.

(d) *Severance.* If the exclusive representative has requested severance in the petition for review, and if the agency opposes the exclusive representative's request for severance, then the agency must explain with specificity why severance is not appropriate.

(e) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

[63 FR 66413, Dec. 2, 1998, as amended at 74 FR 51745, Oct. 8, 2009; 77 FR 26434, May 4, 2012]

§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the union disagrees with any facts or arguments in the agency's statement of position. As more fully explained in paragraph (c) of this section, the exclusive representative is required in its response to, among other things, state why the proposal or provision does not conflict with any law, or why it falls within an exception to management rights, including permissive subjects under 5 U.S.C. 7106(b)(1), and procedures and appropriate arrangements under section 7106(b) (2) and (3). Another purpose of the response is to permit the exclusive representative to request the Authority to sever portions of the proposal or provision and to explain why and how it can be done.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

(c) *Content.* You must file your response on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your response electronically through use of the eFiling system on the FLRA's Web site at www.flra.gov. That Web site also provides copies of response forms. With the exception of a request for severance under paragraph (d) of this section, you must limit your response to the matters that the agency raised in its statement of position. You must date your response, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your response, you must ensure that it includes the following:

(1) Any disagreement with the agency's bargaining obligation or negotiability claims. You must: State the arguments and authorities supporting your opposition to any agency argument; include specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your response electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your petition for review. If not included in the petition for review, then you must state the arguments and authorities supporting any assertion that the proposal or provision does not affect a management right under 5 U.S.C. 7106(a), and any assertion that an exception to management rights applies, including:

(i) Whether and why the proposal or provision concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);

(ii) Whether and why the proposal or provision constitutes a negotiable procedure as set forth in 5 U.S.C. 7106(b)(2);

(iii) Whether and why the proposal or provision constitutes an appropriate arrangement as set forth in 5 U.S.C. 7106(b)(3); and

(iv) Whether and why the proposal or provision enforces an "applicable law," within the meaning of 5 U.S.C. 7106(a)(2).

(2) Any allegation that agency rules or regulations relied on in the agency's statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations.

(d) *Severance*. If not requested in the petition for review, or if the exclusive representative wishes to modify the request in the petition for review, the exclusive representative may request severance in its response. The exclusive

representative must support its request with an explanation of how the severed portion(s) of the proposal or provision may stand alone, and how such severed portion(s) would operate. The exclusive representative also must respond to any agency arguments regarding severance made in the agency's statement of position. The explanation and argument in support of the severed portion(s) must meet the same requirements for specific information set forth in paragraph (c) of this section.

(e) *Service*. A copy of the response of the exclusive representative, including all attachments, must be served in accord with § 2424.2(g).

[63 FR 66413, Dec. 2, 1998, as amended at 74 FR 51745, Oct. 8, 2009; 77 FR 26434, May 4, 2012]

§ 2424.26 Agency's reply; purpose; time limits; content; service.

(a) *Purpose*. The purpose of the agency's reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative's response. As more fully explained in paragraph (c) of this section, the Agency is required in the reply to, among other things, provide the reasons why the proposal or provision does not fit within any exceptions to management rights that were asserted by the exclusive representative in its response, and to explain why severance of the proposal or provision is not appropriate.

(b) *Time limit for filing*. Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the agency receives a copy of the exclusive representative's response to the agency's statement of position, the agency may file a reply.

(c) *Content*. You must file your reply on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your reply electronically through use of the eFiling system on the FLRA's Web site at www.flra.gov. That Web site also provides copies of reply forms. You must limit your reply to matters that the exclusive representative raised for the first time in its response. Your reply